



June 10, 2022

VIA ECF

Hon. Victor Marrero
United States District Court for the
Southern District of New York
500 Pearl Street, Suite 1610
New York, NY 10007

RE: *Frankie Lipsett v. Banco Popular North America d/b/a Popular Community Bank*, No. 22-cv-3901 (S.D.N.Y.) – Request for Pre-Motion Conference

Dear Judge Marrero:

Defendant Popular Bank (formerly known as Banco Popular North America), by and through undersigned counsel, respectfully requests a pre-motion conference pursuant to your Individual Practice Rules concerning Popular Bank's planned motion to compel arbitration of all claims in this action; or, in the alternative, permission to file the motion to compel arbitration without a pre-motion conference. Defendant has sent a demand for arbitration to Mr. Lipsett, through his counsel, in connection with the instant case, but has not received a timely response. Plaintiff had previously refused to arbitrate the earlier related case that he filed against Defendant's indirect parent concerning the same transactions, pursuant to the same arbitration agreement.

Plaintiff's Claims are Subject to an Arbitration Agreement

The above-captioned case alleges that Popular Bank violated its contract with Mr. Lipsett by improperly levying certain overdraft charges. The complaint asserts claims for breach of contract and breach of the implied covenant of good faith and fair dealing with respect to the contract. *See* ECF 1. Plaintiff's claims arise from Plaintiff Lipsett's Personal Banking Disclosure and Agreement with Popular Bank, wherein Mr. Lipsett agreed to arbitrate all claims, disputes, or controversies related to his account. When Mr. Lipsett opened his account in 2004 he agreed that his relationship with the bank would be governed by the Personal Banking Disclosure and Agreement, including a provision permitting Popular Bank to amend the Agreement. In 2008, the bank in fact updated the



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Agreement to add an Arbitration Provision. Notice regarding the arbitration provision was also sent to all personal banking account holders, including Mr. Lipsett, in 2014. Mr. Lipsett has continued to use the account, assenting to the Arbitration Provision. All of Mr. Lipsett's claims are based on that Agreement, and are therefore subject to the Arbitration Provision. In light of this arbitration agreement, which covers all claims in this case, Popular Bank should be permitted to file its motion to compel arbitration pursuant to the Federal Arbitration Act, and to stay the case during the pendency of the motion and then during the course of the arbitration itself.

The Related Case

Plaintiff previously sued Defendant's indirect parent, Popular, Inc., asserting nearly identical allegations concerning the same transactions and the same bank account, in *Lipsett v. Popular, Inc.*, 1:22-CV-811-JMF (*Lipsett I*). *See* Not. Rel. Case, ECF 4. After Plaintiff failed to file an opposition to a motion to compel arbitration filed by Popular, Inc., by the deadline for doing so in that matter, Judge Furman issued an Order to Show Cause with a response date of April 28, 2022. *Lipsett I*, Dkt. 20. Rather than respond to the Order to Show Cause or move to amend the complaint in *Lipsett I* to name the correct defendant, Plaintiff filed a Notice of Voluntary Dismissal on April 27, 2022, *Lipsett I*, Dkt. 22, and then filed this action as a new case. Plaintiff did not note that this action is related to *Lipsett I*. *See* Not. Rel. Case, ECF 4.

For all of these reasons, Defendant respectfully seeks a pre-motion conference regarding Popular Bank's motion to compel arbitration. Defendant files this letter without waiver of service of process.

Respectfully Submitted,

/s/ Michael Y. Kieval

Mitchel H. Kider (application for admission forthcoming)

Michael Y. Kieval (*Pro Hac Vice*)

Charlie K. Cooper (*Pro Hac Vice pending*)

Ryan T. Harris (*Pro Hac Vice pending*)

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cc: counsel of record (by ECF)